

2016 CARE ANNUAL REPORT
REQUEST FOR APPROVAL

To: Scott Smithline
Director

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: September 19, 2017

Decision Subject: Consideration of the Carpet America Recovery Effort 2016 Annual Report

Action By: September 21, 2017

Summary of Request:

Carpet America Recovery Effort (CARE) submitted the *CARE California Carpet Stewardship Program Annual Report, January 2016 – December 2016* (hereafter referred to as the “2016 Annual Report,” see Attachment 1) on June 30, 2017. This item requests the Director’s compliance determination regarding the 2016 Annual Report. Overall, staff found that efforts in 2016 did not result in a demonstration that CARE had achieved its goals; the recycled output rate at 11 percent is below the 16 percent goal set by CARE.

Options:

1. Based on the Statewide Technical and Analytical Resources (STAR) staff findings that several key aspects of the Program reported in CARE’s 2016 Annual Report are non-compliant, direct the Waste Evaluation and Enforcement Branch (WEEB) to verify these findings and other potential violations of the statute and regulations. If warranted, WEEB then should consider action(s) including but not limited to imposition of civil penalties, a compliance schedule, or other options to achieve compliance.
2. Find that CARE achieved continuous meaningful improvement.

Staff Recommendation:

CalRecycle staff recommend Option 1. Therefore, staff recommend WEEB further investigate STAR’s finding and proceed with enforcement actions as appropriate as described in Option 1.

Action:

On the basis of the information, analysis, and findings in this Request for Approval, I hereby direct the Waste Evaluation and Enforcement Branch to commence enforcement evaluation as described in Option 1 above.

Dated: 9-21-17



Scott Smithline, Director

Attachments:

1. *Annual Report to CalRecycle, January 2016 – December 2016:*
<http://www.calrecycle.ca.gov/Carpet/AnnualRpts/2016/CARE2016.pdf>
 2. *California Carpet Stewardship Plan Revised*, January 2014, version 3.2.2.:
<http://www.calrecycle.ca.gov/Carpet/Plans/PlanJun2014.pdf>
 3. *California Carpet Stewardship Plan, Addenda #1, #2 and #3* – links to the individual documents may be found at: <http://www.calrecycle.ca.gov/Carpet/Plans/default.htm>
 4. CalRecycle Response to Independent Audit section of *2016 Annual Report*, August 14, 2017:
<http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=2181&aiid=1990>
 5. Stakeholder Comment Letter on the *2016 Annual Report*:
<http://www.calrecycle.ca.gov/Carpet/AnnualRpts/Comments/default.htm>
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BACKGROUND

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country (Public Resources Code [PRC] §42970), with the purpose of increasing the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to PRC §40051. AB 2398 mandated an extended producer responsibility (EPR) or product stewardship approach. EPR is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of on the general public and local governments, with oversight and enforcement provided by a governmental agency. EPR seeks to encourage product design changes, allows the costs of recycling to be incorporated into the total cost of a product, and places primary responsibility on the producers who make design and marketing decisions to collectively determine the most cost-effective way to implement the recycling program.

Due to the nature of the carpet legislation, it is Carpet America Recovery Effort's (CARE) responsibility to design and implement the California Carpet Stewardship Program on behalf of participating carpet manufacturers to achieve continuous meaningful improvement in landfill diversion and recycling of postconsumer carpet. CARE has considerable flexibility in developing strategies to achieve this broad goal.

While CalRecycle does not dictate the specific design of the Program, it is responsible for evaluating the Program to determine if the requirements mandated by statute, regulation, and the approved Plan are fulfilled. Specifically, CalRecycle has the responsibility to approve or disapprove carpet stewardship plans submitted by manufacturers or their designated carpet stewardship organization (PRC §42973); review annual reports to verify the objectives of the plan are being met (PRC §42975); and provide oversight and enforcement to ensure a level playing field among carpet manufacturers (PRC §42974 and §42978). For manufacturers to be in compliance, they must have an approved plan (PRC §42973(b)), or be part of a stewardship organization with an approved plan, and demonstrate achievement of continuous meaningful improvement in the rates of recycling and other goals included in an approved stewardship plan (PRC §42975(a)). The statute provides for CalRecycle to impose civil penalties on any person who violates any provision of the Product Stewardship for Carpet law (PRC §42970 et seq, and specifically §42978). The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute.

CARE is implementing its California Carpet Stewardship Plan, titled *California Carpet Stewardship Plan Revised, version 3.2.2* (Attachment 2). CARE also submitted three Addenda to the Plan (Attachment 3), most recently Addendum #3, approved by the Director in January 2016. These documents are collectively referred to as the Plan. Although the Plan expired on December 31, 2016, CalRecycle has allowed CARE

to manage the Program pending the submission of a new Carpet Stewardship Plan (by CARE or by other entities) by October 19, 2017. CalRecycle has sixty days after receiving the Plan by October 19, 2017 to review CARE's new Plan.

In 2016, CalRecycle found the California Carpet Stewardship Program out of compliance because the 2015 Annual Report demonstrated that the Program was not making continuous meaningful improvement as required by statute. At that time CalRecycle's Waste Evaluation and Enforcement Branch (WEEB) was directed to verify CalRecycle's Statewide Technical and Analytical (STAR) staff findings, contained in the 2015 CARE Annual Report Request for Approval, and other potential violations of the statute and regulations and, if warranted, consider action(s) including but not limited to imposition of civil penalties, a compliance schedule, or other options to achieve compliance.

On June 30, 2017, CARE submitted the Carpet Stewardship Program's fourth Annual Report, titled *CARE California Carpet Stewardship Program Annual Report, January 2016 – December 2016*, as required by PRC §42976.

Additionally, the 2016 Annual Report includes independent financial audit information. Appendix 10.10, *Audited Financial Statements*, prepared by the independent auditor, Nichols, Cauley & Associates, LLC, covers the *CARE 2016 Audited Financial Statement* (section 10.10.a), *CA Carpet Stewardship Plan 2016 Audited Financial Statement* (section 10.10.b), and *Performance Audit 2016* (section 10.10.c). As required by regulation, CalRecycle's Audit staff separately reviewed these audit reports and the findings were communicated in a letter sent to CARE on August 14, 2017 (Attachment 4). Staff determined that all unresolved audit findings from previous years have been resolved and there are no new audit findings.

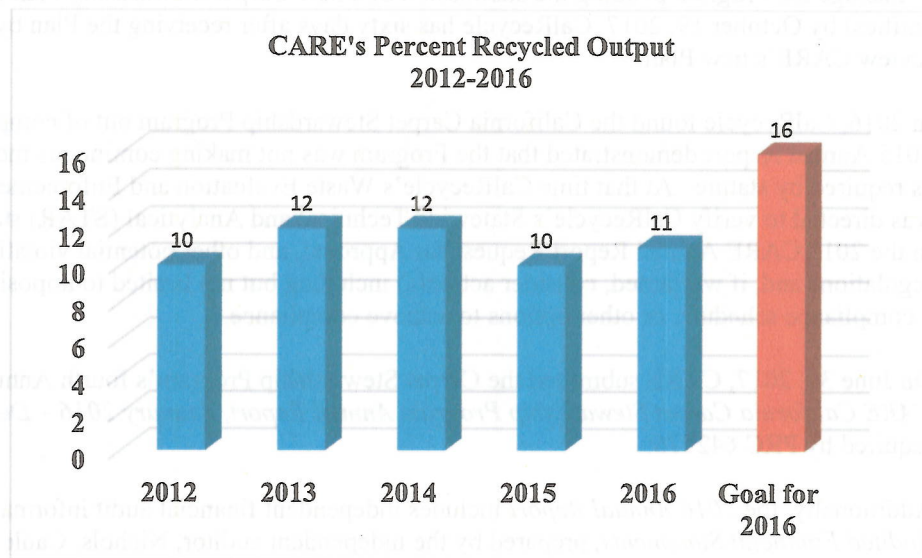
FINDINGS AND ANALYSIS OF CARE'S 2016 ANNUAL REPORT

The 2016 Annual Report describes CARE's performance data for 2016, as well as the actions CARE took in response to CalRecycle's noncompliance determination in September 2016 (regarding the 2015 Annual Report). CalRecycle acknowledges CARE made several changes to the Program with respect to the determination that it was noncompliant based upon the 2015 Annual Report. However, the 2016 Annual Report does not demonstrate that CARE is meeting critical performance goals outlined in its approved plan and in statute, in particular relative to recycled output and "continuous meaningful improvement."

Although there may be other violations of statute and regulations, the following key findings regarding the 2016 Annual Report support the conclusion that CARE is noncompliant:

FINDING 1: CARE failed to meet the recycling goal set forth in its Plan and failed to demonstrate continuous and meaningful improvement in diversion and towards the other Plan goals.

- **Requirements:** PRC §42975(a) states an Annual Report must demonstrate "continuous meaningful improvement in the rates of recycling and diversion of postconsumer carpet" and meet other goals presented in the statute, regulations, and approved Plan. The Plan goal was to achieve a recycling rate of 16% by 2016.
- **Analysis:** The 2016 Annual Report shows that the key measures of recycled output, along with diversion, are lower than the goals outlined in the approved Plan and that other key goals also did not improve in 2016. [CARE reported a 16% recycled output rate in Q1 of 2017, but this is not relevant to the 2016 timeframe].
 - Goals with trend information are presented below:
 - **Recycling rate:** The baseline in 2011/2012 of recycled output was 8%. CARE has shown recycled output at 10% for 2012, 12% for 2013, 12% for 2014, 10% for 2015, and 11% for 2016 (see chart below). CARE failed to achieve the Plan goal of 16%.



- **Source reduction:** The Program uses the average weight of carpet as its primary source reduction metric. Beginning in the third quarter of 2016, source reduction was negatively impacted, because the average weight of carpet increased from 4.20 to 4.39 pounds per square yard.
- **Recyclability:** CARE defined recyclability in its Plan as; 1) The ease by which carpets can be recycled (accessibility to recycling and processing facilities), and 2) The ease by which carpets can be separated into component parts to be recycled (processing technology). In the 2016 Annual Report CARE did not report on improvements to accessibility to recycling and processing facilities in the section on recyclability, nor did it address the ease by which carpets can be separated into component parts. CARE specifically stated that design improvements to increase the recyclability of carpet and carpet tile are outside of CARE's purview and under the control of the carpet mills.

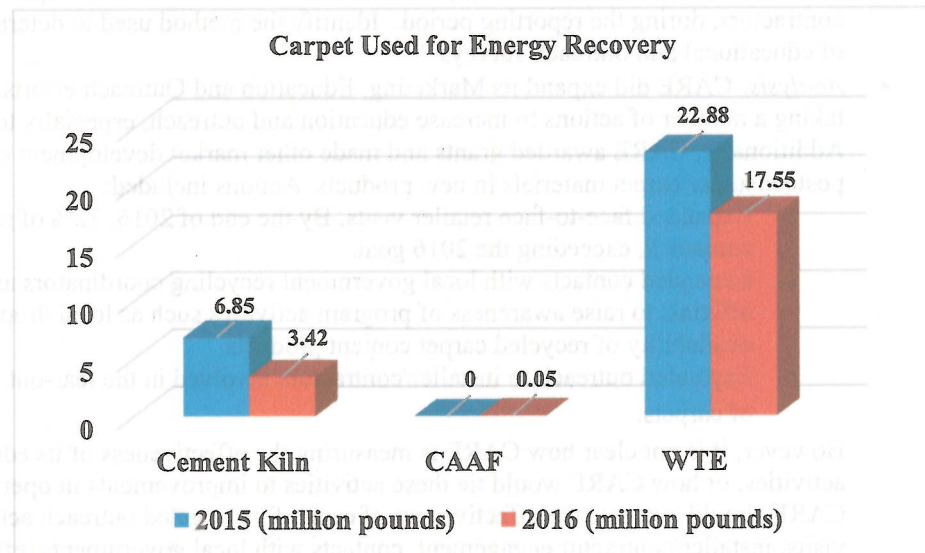
With respect to increasing the recyclability of carpet, CARE's Plan states it will publish best practices for the recycling of carpet and describe in the Annual Report how AB 2398 subsidy funds are spent and invested by member companies on an aggregate basis. The 2016 Annual Report did not include best practices for the recycling of carpet nor did it describe how subsidy funds are spent and invested on an aggregate basis.

One metric CARE uses to monitor recyclability is yield. Yield is calculated as the percent of gross collections converted to recycled output. Yield increased slightly in 2016 to 35.1 percent of gross collections, compared to 33.8 percent in 2015. However, this rate is 6 percent below the high of 41.1 percent achieved in 2013.

- **Reuse:** Reuse increased by 51 percent in 2016 to 926,000 pounds compared to 602,000 pounds in 2015. While an improvement, this represents 0.27 percent of the carpet discarded during the year. This minor success in the 2016 Annual Report does not overshadow the significant lack of improvement in recycled output.
- **Diversion:** Reported diversion decreased from 73 million pounds (21 percent of discards) in 2015, to 61 million pounds (18 percent of discards) in 2016.

Reported diversion is calculated by the sum of reuse, recycled output (Type 1 + Type 2 + calcium carbonate + Carcass), carpet as an alternative fuel (CAAF) and Kiln, waste-to-energy (WTE) and exported whole carpet.

- **Energy recovery:** Energy recovery decreased in 2016. Energy recovery, under AB 2398, is considered diversion. The different methods used to recover energy are CAAF, cement kiln, and WTE. Only CAAF and cement kiln received subsidies. No subsidies were paid for WTE. The following chart illustrates the amount of carpet used for energy recovery in 2015 and 2016:



FINDING 2: Consumers purchasing carpet do not have reasonable access to recycling services in all counties.

- **Requirements:** Title 14 of the California Code of Regulations (CCR) §18943(a)(5)(E) requires carpet consumers to have reasonably convenient opportunity(ies) in each county to manage their post-consumer carpet.
- **Analysis:** The number of counties served has increased, but many counties still lack carpet recycling services.
 - The *2016 Annual Report* indicates 33 official CARE drop-off sites in the state compared to 23 official sites in 2015. Each is in a different county, so CARE now serves 33 counties out of 58 counties. (Note: CARE drop-off sites are locations where CARE has set up and provided direct funding for carpet collection containers and transportation of those containers to a recycling facility. Independent sites are those operated by collector-sorter entrepreneurs operating within the CARE program.) While the increase in drop-off sites demonstrates improvement towards the requirement of service in each county, CARE has failed to achieve the reasonably convenient opportunities required under the regulation.
 - CARE estimates that there are approximately 200 additional private carpet collection containers statewide that feed into the CARE program via independent collector-sorter entrepreneurs, but these are not set up directly by CARE nor do they receive assistance from CARE. It is not clear what type and quantities of carpet are accepted at these sites, and what level of convenience these sites offer consumers. The Annual Report does not

provide adequate information on the types and quantities of carpet that are accepted at these sites, therefore their performance cannot be evaluated nor can these sites be counted as part of assessable convenience sites.

OTHER ISSUES TO CONSIDER: CARE should provide additional details regarding its methodology and evaluation of Marketing, Education and Outreach activities.

- **Requirements:** Among other things, CCR §18944(a)(8) requires the carpet stewardship organization to “List educational outreach activities in the stewardship plan. Provide a description of educational materials that were provided to retailers, consumers, carpet removers/installers, contractors, during the reporting period. Identify the method used to determine the effectiveness of educational and outreach surveys.”
- **Analysis:** CARE did expand its Marketing, Education and Outreach efforts and funding in 2016, taking a number of actions to increase education and outreach, especially to retailers. Additionally, CARE awarded grants and made other market development efforts to expand use of postconsumer carpet materials in new products. Actions included:
 - Expanded face-to-face retailer visits. By the end of 2016, 72% of retailers had been contacted, exceeding the 2016 goal.
 - Expanded contacts with local government recycling coordinators and procurement officials to raise awareness of program activities such as local drop-off sites and the availability of recycled carpet content products.
 - Expanded outreach to installer/contractors involved in the tear-out and disposal/recycling of carpets.

However, it is not clear how CARE is measuring the effectiveness of its education and outreach activities, or how CARE would tie these activities to improvements in operational performance. CARE should evaluate the effectiveness of each of its targeted outreach activities such as retailer visits, installer/contractor engagement, contacts with local governments, efficacy of drop-off sites in carpet collection, etc. Additionally, CARE should start a specific education and outreach campaign for Tier 2 manufacturers to develop additional markets for post-consumer carpet materials.

STAKEHOLDER COMMENTS

CalRecycle received one comment letter from a local government representative regarding the 2016 *Annual Report*. The commenter suggests that the approach of the CARE program is fundamentally flawed and has not worked, because it relies on incentives offered to third party recyclers, rather than a circular economy approach where manufacturers of carpet continuously recycle old carpet into new products. The commenter supported CalRecycle utilizing all enforcement tools available and making necessary program adjustments to encourage the carpet industry to recycle carpet themselves. Attachment 5 is a webpage link that provides the full text of this letter.